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CHARLES J. OGLETREE, JR.

October 18, 2002

2002 OCT 21 P 2:26

HAND-DELIVERED

Geoffrey H. Griffis, Chairman
District of Columbia Board of Zoning Adjustment
441 Fourth Street, N.W. - Suite 220 South
Washington, D.C. 20004

Re: BZA Application No. 16896 - Randle Highlands Manor

Dear Mr. Griffis:

This firm was asked by Randle Highlands Citizens Civic Association ("RHCCA") to prepare an analysis of the above-referenced application for special exception and variance relief at premises located at lot 812 in Square 5585 (the "property") and to file that analysis on its behalf in the instant proceeding before the D.C. Board of Zoning Adjustment ("BZA"). We have reviewed the materials filed by Randle Highlands Manor Limited Partnership (the "Applicant"), the report of the Office of Planning, dated July 11, 2002, and the transcript of the public hearing conducted in this matter on July 16, 2002,[1] in relation to the requirements of the Zoning Regulations and made examination of other governmental records.

The Applicant seeks to develop a 52-unit assisted living facility on the property in an R-5-A district which requires a special exception under §§ 358 and 3104.1 of the Zoning Regulations. In addition, the Applicant has requested area variances to increase the allowable floor area ratio (FAR) of 0.9 established by § 402.4 of the Zoning Regulations and to add one additional story to the proposed building above that provided for in § 400.1 of the Zoning Regulations. Based upon our review, the

[1]Reference to the public hearing transcript in BZA Application No. 16986 will made in the following format: (Tr., p. __ at ln ___).

BZA
Case No. 16896
Exhibit No. 44

Board of Zoning Adjustment
District of Columbia
CASE NO.16896
EXHIBIT NO.44

application is deficient in the following respects which are discussed more fully in the captioned paragraphs below:

(i) the Applicant does not satisfy the "uniqueness" criteria of § 3103.2 entitling it to variance relief;

(ii) the proposed structure exceeds the 40-foot height limit of § 400.1 applicable in the R-5-A zoning district;

(iii) the Applicant's proposed community-based residential facility is located within 500-feet of other similar facilities as prohibited by 350.4(f).

Entitlement to Variance Relief

The Applicant proposes to double the allowable FAR on the property from 0.9 to 1.97 and to add a fourth story. In order to be entitled to such relief, the Applicant must first demonstrate some unique condition inherent in the property that will occasion practical difficulties in developing the site. In this case, the property in question is an unexceptional, unimproved corner lot, rectangular in shape and containing a land area of 15,219 square feet. The only unique physical feature of the lot appears to be topographical, as the lot gradually slopes upward from 27th Street rising approximately 10' in elevation at the eastern edge of the property. The property is similar in size, shape and topography to the other two lots to the north in the 1600-block of 27th Street, S.E.

The Applicant's theory seems to be that through a confluence of factors, none of which relate to the specific piece of property at issue, the property is nonetheless unique. For example, the Applicant contends that: (i) the District has goals and objectives of providing needed services to elderly residents which include, *inter alia*, affordable assisted-living residences; (ii) "[t]here are no affordable assisted-living residences either in Randle Highlands or in the broader "East of the River" community"; (iii) the Applicant could not find a suitable parcel of ground in Ward 7 large enough to situate a 52-unit, affordable assisted-living residence; and (iv) the failure to use the property for this

purpose will frustrate the programs of the District.[2] It is this confluence of factors on which the Applicant relies to sustain its case for the requested variances.

We believe that the facts and record in this application lead to another conclusion. The Applicant relies on the decisions in Draude v. D.C. Board of Zoning Adjustment, 582 A.2d 949 (D.C. App. 1990) and Monaco v. D.C. Board of Zoning Adjustment, 407 1091 (D.C. App. 1979) for the proposition that when a "public service" seeks a variance that the needs of the public service may be deemed to constitute the "other or extraordinary and exceptional situation or condition of a particular piece of property" sufficient to satisfy the variance test.[3] The Court of Appeals observed in Monaco that a commercial user may not rely on the same flexibility from the BZA. In this instance, the Applicant is a for profit enterprise,[4] which acquired property from the District government that was set aside for home-ownership purposes,[5] demolished the existing building with public monies,[6] decided it could not profitably use the property as originally proposed with 39 units of affordable assisted-living residences[7] and then increased the unit count, added the extra story and boosted the FAR to make its numbers work[8].

The only problem inherent in the property in this instance is that it is too small for the building which ensures profitability for the Applicant. There is no credible showing in the record that no other use can be made of the property as a matter-of-right. Similarly, there is no plausible way for the applicant to maintain

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[2]*See, generally*, Statement In Support of the Application of the Randle Highlands Manor Limited Partnership, p. 2, 6, 8-11.

[3]In Draude, the public service was a local university; in Monaco, a "non-profit organization which is a well-established element of our governmental system." Monaco, at p. 1098.

[4]Tr., p. 304 at ln. 20-25.

[5]Tr., p. 303 at ln. 1-20.

[6]See Exhibit 1 attached hereto, Sept. 17, 1998 letter from Anacostia Economic Development Corporation to Lynn French.

[7]Tr. p. 278, at ln. 18-21.

[8]Tr. p. 279, at ln. 7-8.

that within the area of the District east of the Anacostia River there was no available lot within or adjacent to a residential zoning district with a size adequate to support 30,000 square feet of gross floor area.

The building which the Applicant demolished to make way for its proposed development is not relevant to the inquiry now before the BZA. The Applicant cites to Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment, 320 A.2d 291 (D.C. App. 1974) and erroneously argues that the case is similar to the facts now before the BZA. St. Viator was the first case to establish that the uniqueness test for variance purposes could be met by the circumstances of the building on the land, and not just those inherent in the land solely. In St. Viator the religious order could not use their seminary building and sought a variance to permit its conversion to a nursing home. Here, of course, the Applicant cannot be allowed to argue that, having demolished the building, the BZA should now recognize that an aspect of the uniqueness of this property was the fact that the building "was not useable as an assisted living facility, nor as an apartment building for that matter".[9]

Building Height Exceeds 40-Feet.

The height limitation in the R-5-A zoning district is 40 feet, which, pursuant to § 199, is the vertical distance measured "from the finished grade level at the middle of the front of the building to the ceiling of the top story" (for buildings located in districts in which building height is limited to forty feet). The Applicant is evidently using R Street as the front of the proposed building for the purposes of measuring building height.[10] The Applicant derives a building height of 38.81 feet (38 feet 9 and 3/4 inches) only by averaging the grade across the R Street frontage of the building, not the finished grade at the building's

[9]*See*, Statement In Support of the Application of the Randle Highlands Manor Limited Partnership, p. 8

[10]See "Left Elevation" in the plans submitted by Applicant.

face, but the finished grade level along the face of a retaining wall eight feet (8') removed from the face of the building.[11] By so doing, the Applicant improperly excludes 4.3125 feet from the calculation of the building height.

We are unaware of any precedent or procedure, adopted by the Zoning Administrator, DCRA in interpreting the Zoning Regulations, allowing such an arbitrary method of averaging finished grade levels to calculate building height or of establishing the measuring point at some place other than the face of the building.

Location of Other CBRFs

We have identified two other community-based residential facilities within a 500-foot radius of the property; however, in both instances the Certificates of Occupancy limits occupancy to less than seven (7) persons.[12] We also note that the property located at 1724 27th Street, S.E. is a 13-unit apartment house owned by The House of Ruth and is, to the best of our information and belief, operated as emergency and temporary housing for abused women and their families.[13] Though not apparently classified as a CBRF for Certificate of Occupancy purposes, such a facility would seem to possess all other indicia of a being CBRF. Taken together, we believe that this concentration of CBRFs (identified on Exhibit 5 attached hereto) argues against the approval of the application in this location.

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[11]Since complete topographic information showing finished grades was not shown on the Left Elevation plan, we have assumed that the calculation made by the Applicant is mathematically correct, but without the grades being indicated it is difficult to determine the methodology employed by the Applicant.

[12]2510 R Street, S.E. and 2620 R Street, S.E. The corresponding Certificates of Occupancy are attached as Exhibits 2 and 3. Furthermore, 2620 R Street is licenced by the Department of Mental Health (#873) issued 6/19/02 through 6/18/03 for 8-10 beds.

[13]The Certificate of Occupancy for 1724 27th Street, S.E. is attached hereto as Exhibit 4.

For all of the foregoing reasons, we believe that this application should be denied.

Respectfully submitted,

JORDAN KEYS & JESSAMY, LLP

By: George R. Keys, Jr.
George R. Keys, Jr.

cc: Jerry A. Moore, III, Esquire
Geraldine Marshall

Exhibits 1-5

EXHIBIT 1

07/16/02 TUE 10 [TX/RX NO 7221]

Anacostia Economic Development Corporation
2019 Martin Luther King, Jr. Avenue, SE
Washington, D.C. 20020
(202) 889-5100
FAX (202) 889-9508

"Serving the Community Since 1969"

September 17, 1998

Lynn French
Homestead Program Administrator
D.C. Department of Housing and Community Development
P.O. Box 2024
Washington, D.C. 20013

Re: 1624, -26, -28 27th Street, S.E.

Dear Ms. French:

This letter is to confirm that the Homestead Program will provide the Anacostia Economic Development Corporation (AEDC) with a deferred loan of $390,000 ($10,000 per unit) to develop a 39 unit assisted living facility on the property, known as, 1624, -26, -28 27th Street, S.E. AEDC requests approval to use this funding to pay for development and closing costs associated with developing a thirty-nine (39) unit assisted senior citizens housing facility.

It is AEDC's plan to start demolition of the property immediately after receiving the $390,000 deferred loan.

If the above meets with your approval, please so indicate below and return one of the originals of this letter to AEDC. Thank you for your assistance in this matter.

Sincerely,

James A. Diggs, Jr.
Director of Real Estate and
Commercial Services

SEEN and AGREED to, this 18th day of September, 1998.

Lynn French

cc: Theresa Howe-Jones, Chairperson, AEDC
Albert R. Hopkins, Jr.
Lisa Bolden

07/17/2002 04:31 2029669826 FROM AEDC 889 9508 P.8
1-06-1995 4:14AM LISA BOLDEN

EXHIBIT 2

No. B 162238

District of Columbia Government
Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration Zoning Division
P.O. BOX 37200 — Washington, D.C. 20013-7200

BLRA-17
(Rev. 5/86)

C-72742

CERTIFICATE OF OCCUPANCY

January 30, 1992
(date)

Permission is hereby granted to X VOCA CORPORATION
to use suite(s) _____ on the first floor(s)
of the building located on lot(s) 78 square 5586
known as premises 2510 R Street, S. E. for the following
purpose(s) CRFMR - Six (6) persons sleeping on the first
floor: Not sexually oriented. [su]

BZA #: _____ EXPIRATION DATE: _____

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises, or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

ZONE R-5-A

FEE $ 27.00

Donald G. Murray, Director

By _____
Designee

86—P-3601 wd112

OFFICE COPY

EXHIBIT 3

BLRA-17
(Rev 12/95)

District of Columbia Government
Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration Zoning Division
P.O. BOX 37200 — Washington, D.C. 20013-7200

183564

CERTIFICATE OF OCCUPANCY

3-18-99
(date)

Permission is hereby granted to MAGGIE MC BRYDE
to use suite(s) _____ on the THREE FLOORS floor(s)
of the building located on lot(s) 64 square 5586
known as premises 2620 " R" STREET SE. for the following
purpose(s) CRF - (5) RESIDENTS (1) LIVE-IN (1) ROTATING STAFF
" THIS BUSINESS IS NOT SEXUALLY ORIENTED" [ ] SU

BZA # _____ EXPIRATION DATE: _____

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

OFFICE COPY

Store: 004 Location: OFFICE OF FINANCE & TREASURY GOVERNMENT
Reg# 0 03/18/99 at 10:47:41 Clk# 15
Receipt# 030318004 Amount $34.34
EB2200121d OCCUP. PERMIT

ZONE R5A

FEE $ 34.34

Director

Designee

98-0802PM5

EXHIBIT 4

188438

District of Columbia Government
Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration Zoning Division
P.O. BOX 37200 — Washington, D.C. 20013-7200

BLRA-17
(Rev 12/05)

CERTIFICATE OF OCCUPANCY

8/18/00
(date)

Permission is hereby granted to HOUSE OF RUTH
to use suite(s) _____ on the BASEMENT, 1st, 2nd, 3rd floor(s)
of the building located on lot(s) 41 square 5635
known as premises 1724 - 27th STREET, S.E. for the following
purpose(s) APARTMENT BUILDING - 13 UNITS
NOT SEXUALLY ORIENTED [ ]

BZA # _____ EXPIRATION DATE: _____

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises or part thereof, and for the purpose(s) indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

ZONE R5A FEE $ 32.00

Director L. JORDAN

By _____
Designee

05-10-02 11:02 NFFF LOCAL2008 ID=2024822798 P.01

EXHIBIT 5

Washington, D.C. Office of Tax and Revenue

Properties within a 200 foot radius.



BZA
Case No. 16896
Exhibit No. 38

Creation Date: Tue Apr 16 13:19:49 2002

Note: Data Contained in this map is the most current available.

● Selected Property
■ Property within radius

Assessor name: Ward 7